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July 11, 1996

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
Washington, DC 20554

Re: MM Docket 96-16

Dear Mr. Caton:

Transmitted herewith on behalf of the Texas Association of Broadcasters are an original and four (4) copies of its Comments in the above-referenced proceeding.

Should you or the staff have any questions, kindly contact the undersigned.

Sincerely,

Neal J. Friedman

Enclosures
cc: Chairman Reed E. Hundt
Commissioner James H. Quello
Commissioner Rachelle B. Chong
Commissioner Susan Ness

No. of Copies rec'd 0+4
List A B C D E

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Streamlining Broadcast EEO	)	
Rules and Policies, Vacating the EEO	)	MM Docket No. 96-16
Forfeiture Policy Statement	)	
and Amending Section 1.80 of	)	
the Commission's Rules To Include	)	
EEO Forfeiture Guidelines	)	

TO: The Federal Communications Commission

COMMENTS OF THE TEXAS ASSOCIATION OF BROADCASTERS

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July 11, 1996

TABLE OF CONTENTS

ATTACHMENT A - COMMENTS OF TEXAS ASSOCIATION OF BROADCASTERS IN MM DOCKET 94-34

ATTACHMENT B - DECLARATION OF ANN ARNOLD, EXECUTIVE DIRECTOR, TEXAS ASSOCIATION OF BROADCASTERS

ATTACHMENT C - DECLARATION OF ANN ARNOLD

SUMMARY

The Texas Association of Broadcasters ("TAB") respectfully submits its Comments in response to the Order and Notice of Proposed Rule Making ("NPRM") in MM Docket 96-16.

TAB is a voluntary association, established in 1951, representing radio and television stations throughout the State of Texas. The ethnic diversity of Texas is as rich as any part of America; thus, TAB is particularly suited to comment in this proceeding.

TAB proposes that any station reporting 50% or more of parity in its annual employment report be deemed to be in compliance for the previous year absent a showing of discrimination or a challenge to the accuracy of the numbers in its annual employment report. Any station held to be in compliance with the EEO guidelines would be exempted from the Commission's record-keeping requirements until its next license renewal.

The current procedure for evaluating a station's EEO record according to MSA minority labor force statistics is too broad. Rather, TAB recommends that the Commission consider the workforce within a station's principal community contour instead. This would provide an objective, readily available frame of reference for licensees, the Commission and the public.

TAB further recommends that stations receive substantial credit for participation in central recruiting sources such as those operated by TAB and other state associations. The Commission's proposal to modify record-keeping obligations based upon participation in job fairs is commendable; however, TAB also believes that stations should be permitted to count

part-time employees and interns for consideration and that the requirement for participation in four or more job fairs per year is excessive, particularly for smaller stations.

The present exemption from reporting requirements for stations with fewer five full-time employees should be increased to exempt stations with fewer than 15 employees. Additionally, the Commission should conduct an interim review of each licensee's EEO performance at the midpoint of its license term. Those stations that demonstrate a steady or increased level of minority and female employment in all job categories, together with participation in joint recruitment efforts, should be excused from the record-keeping requirements for the balance of the license term.

The Commission's EEO forfeiture guidelines should be substantially revised to allow for only a warning in the first instance of a violation of record-keeping requirements. Monetary forfeitures would only be assessed for repeated violations.

In light of recent court decisions and the role of other state and federal agencies in EEO compliance, the Commission should give serious consideration to reducing or eliminating its role in EEO enforcement.

Finally, the Commission must continue to reform its renewal process to further eliminate the abuses by parties who seek only to advance their private interest in filing petitions to deny based on alleged violation of the Commission's EEO Rules.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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TO: The Federal Communications Commission

COMMENTS OF THE TEXAS ASSOCIATION OF BROADCASTERS

The Texas Association of Broadcasters ("TAB"), by its attorney, hereby submits its comments in response to the Order and Notice of Proposed Rule Making ("NPRM"), FCC 96-16, released February 16, 1996, in the above captioned proceeding.[1/]

The NPRM seeks public comment on a broad range of issues related to the Federal Communications Commission's Equal Employment Opportunity ("EEO") rules, procedures, policies, standards and guidelines in promoting equality of employment opportunity in the broadcast industry.[2/]

1/ By Order, DA 96-1033, released June 26, 1996, the Commission extended the date for comments until July 11, 1996.

2/ The Commission issued a Notice of Inquiry, Implementation of Commission's Equal Employment Opportunity Rules, MM Docket No. 94-34, 9 FCC Rcd 2047 (1994). The Texas Association of Broadcasters filed comments in that proceeding, which are attached hereto as Attachment A and incorporated herein by reference.

TAB is a voluntary association, established in 1951 and incorporated the following year as a non-profit corporation, representing radio and television stations throughout the state of Texas.

I. BROADCASTING IN TEXAS

There are 701 licensed and operating commercial radio stations in the State of Texas and 126 television stations -- more than any other state in the Nation. Texas, with 20 television markets, includes two of the top 15 markets, three of the top 50 markets, seven of the top 100 and 15 of the top 150 markets. *Television and Cable Factbook*, 1996 Ed. The vast majority of Texas broadcasters, however, are in medium and small markets. There are 239 radio stations operating in markets with populations of 20,000 persons or less; 169 stations in markets of 20,001 to 100,000 persons; 250 stations in markets of 100,001 to 500,000 persons; and 169 stations in markets of more than 500,000 persons. Many of the stations in small to large markets are owner-operated, but some of America's most prominent media groups have invested in Texas stations as well.

The ethnic diversity of Texas is as rich as any part of America. Blacks and Hispanics constitute significant portions of the work force in many Texas markets. In fact in many South Texas markets Hispanics actually are statistically in the majority. In other Texas markets, there are significant numbers of African-Americans, Hispanics and Asians represented in the work force. According to 1990 census data, the Corpus Christi workforce is 47.3% Hispanic, the Dallas workforce is 14.2% Black and 12.7% Hispanic, the El Paso workforce is 67.2% Hispanic, the Houston workforce is 16.6% Black and 18.7% Hispanic, the Laredo workforce is 92% Hispanic, the McAllen workforce is 85.3% Hispanic, the San

Antonio workforce is 44.4% Hispanic. Thus, Texas represents a microcosm of the Nation and the experience of Texas broadcasters in complying with the Commission's EEO rules is, therefore, especially relevant.

II. SUGGESTIONS FOR STREAMLINING PROPOSALS

The Association presents its suggestions in the order they are viewed as most pressing to eliminate the costly administrative burden imposed on broadcasters by the Commission's current and proposed rules. The suggestions made herein by TAB would bring the Commission's EEO rules more in line with recent court decisions and, thus, more likely to withstand court tests.

A. Exempt Stations Meeting 50 Percent or Greater Parity

TAB suggests the most reasonable benchmark to measure EEO compliance is based on the station's employment profile for overall and upper-level positions. TAB proposes that any station reporting 50 percent or more of parity in its annual employment report be deemed to have been in compliance for the previous year absent a *prima facie* showing of discrimination or a challenge to the accuracy of the numbers. Any station so held to be in compliance with EEO guidelines would be exempted from specific formal recruitment and documentation requirements until the next license renewal.

The Commission should revise its current "guilty until proven innocent" standard to put the burden of proof on the petitioner rather than the incumbent licensee in the event of a renewal challenge. In keeping with an important reform in the renewal process in the Telecommunications Act of 1996, competing renewal applications may be filed only *after* a finding that the incumbent licensee does not merit renewal. A petitioner seeking to deny

renewal of the license of a station that is exempt from the record-keeping requirements would be obligated to prove overt discrimination on the part of the licensee or demonstrate that there had been a fully adjudicated finding of violation of state or federal EEO statutes.

B. Evaluate EEO Record According to Principal Community Contour

TAB believes the current standard of evaluating a station's EEO record according to its MSA minority labor force is too broad in many instances. It subjects a Class A FM station and an AM daytimer serving a limited area that may be far removed from the population center to the same standard as a Class C FM, a 50 kW clear channel AM or a VHF television station that serves a large regional audience.

Some stations have argued, generally without success, that the Commission should consider labor force statistics for their home county. This, TAB agrees, is too narrow. Instead, TAB proposes that the Commission evaluate a licensee's EEO performance based on work force statistics in those counties in which more than 50 percent of the population is within the station's principal community contour. For AM stations with differing day and night coverage patterns, the benchmark would be the larger of the two. This would avoid anomalies such as cited above and would avoid problems that may arise in the future if the industry standard for measuring markets changes. Using the principal community contour as the benchmark would provide an objective, readily available frame of reference for licensees, the Commission and the public. Equally important, it would accurately reflect the area that a station serves and from which it is likely to draw employees.

C. Credit Stations for Recruitment Efforts

1. Exempt Stations That Use a Central Recruitment Source

Stations utilizing a central recruitment source that significantly enhances minority applications should receive credit for their participation in such programs. Stations working together can accomplish far more than the duplicative efforts made by individual stations. Combining resources to recruit minorities develops a synergy of creative and diverse recruitment programs ranging from job fairs and job banks to professional recruitment staffs and extensive collaborative efforts with minority groups and opinion leaders. Such efforts can be made even more productive by stations' promoting the activities with public service announcements and advertising on their own medium. These efforts should carry considerable weight for the Commission in evaluating a station's efforts to recruit minorities.

In response to the Commission's suggestion at para. 32 of the NPRM that stations could use a state broadcast association as a central recruitment source, TAB presents itself as a model that significantly enhances stations' minority recruitment. See Declaration of Ann Arnold at Attachment B.

2. Credit Stations for Other Cooperative Efforts

The Commission's proposal to modify record-keeping obligations based on participation in job fairs is commendable. TAB's experience as a sponsor of job fairs has been that these efforts yield substantial results. TAB, however, believes that credit should be given for participation in a broader variety of cooperative efforts such as taking part in TAB's other recruitment programs and for airing advertisements about job opportunities. The requirement for participation in four job fairs per year is excessive, especially for smaller

stations and those located at some distance from population centers. Continuous, meaningful participation in year-round efforts, such as job banks, should be credited as well. The Commission should not impose any formal record-keeping requirement for these efforts. Rather, it should permit licensees to submit a narrative statement with their renewal application sufficient to give the Commission staff reviewing the application a picture of the station's efforts.

3. Allow Stations to Cite Part-time Employees and Interns for Consideration

In an effort to reduce the administrative burden of keeping records of part-time employees, TAB respectfully suggests that the Commission eliminate all record-keeping requirements for part-time employees. However, part-time hires and interns, particularly in smaller stations, are often the first people a manager will consider when there is an opening for a full-time employee. The part-timer is a known quantity to the employer. As often as not, an individual accepts part-time employment or an internship as a way of getting a foot in the door with the expectation that it may lead to a full-time job. TAB therefore asks the Commission to permit licensees to cite their record of part-time employment and internships in mitigation of any minor deficiencies in their full-time employment profiles. An employee or intern should be required to work at least 12 hours per week in order to qualify for consideration. This would be the equivalent of one and a half days, and would cover employees and interns who work weekend shifts when many part-timers are frequently scheduled to work.

4. Alleviate Record Keeping for Positions Filled by Promotions Within an Organization

TAB asks the Commission to give stations more latitude for vacant positions that are filled by promotions within an organization. A station should be allowed to first seek to promote from within before being subjected to the rigorous record-keeping requirements of its solicitations and responses from all of its recruitment sources.

D. Staff Size Should be a Qualifying Factor

The NPRM at para. 21 (a) asks whether staff size should be a qualifying factor. TAB believes the present exemption from reporting requirements for stations with fewer than five full-time employees should be increased to those with fewer than 15 employees. This would still bring virtually all television stations and larger radio stations under the record-keeping requirement.

Moreover, larger stations with consistently good records in recruiting and promoting minorities and females should be rewarded for their efforts by being excused from the record-keeping burden as well. The Telecommunications Act of 1996 (P.L. 104-104) amended Section 307(c) of the Communications Act of 1934, to permit the Commission to extend license terms to as long as eight years for both radio and television stations.[3/] TAB proposes that the Commission conduct an interim review of each licensee's EEO performance at the mid-point of its license term. Licensees who demonstrate a steady or increased level of minority and female employment in all job categories, together with

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[3/] By Notice of Proposed Rulemaking, FCC 96-169, released April 12, 1996, the Commission seeks public comment on a proposal to increase the term of broadcast licenses to eight years.

participation in joint recruitment efforts with other broadcasters through local, state and national associations and who have not been found to have violated state or federal anti-discrimination statutes should be excused from the record-keeping requirement for the balance of the license term. At renewal, the Commission would again review the licensee's performance and, where appropriate, grant renewal for a full term with no reporting requirements for four years when another review would occur.

In para. 21(a) of the NPRM, the Commission asks for comment on the effect of increasing the threshold for relief from EEO policies from the present level of five or more full-time employees. Based on the Commission's data, relieving stations with fewer than 15 employees will eliminate nearly two-thirds of licensees from this burdensome requirement. TAB suggests that the Commission consider that the following factors bear more relevance than the number of stations that would be excluded:

o An exemption of stations with fewer than 15 employees falls in line with the U.S. Equal Employment Opportunity Commission's standards for investigating and enforcing anti-discrimination laws against employers with 15 or more employees, as specified by Title VII of the Civil Rights Act of 1964, as amended. Congress has never amended Title VII to include within the EEOC's jurisdiction employers with fewer than 15 employees.

o It is well recognized under employment anti-discrimination statutes that there must be a significant number of employment decisions in the same job category in order to attach a nexus between statistical significance and a possible discriminatory practice. A fewer-than-15-employee threshold may be a better indicator and gauge for determining whether results from a statistical significance test may be due to a discriminatory practice. It is doubtful

whether any statistical significance may attach as a result of having a smaller number as a threshold.

o Broadcasters with five or even ten employees are being unfairly scrutinized compared to other businesses. Certainly this puts broadcasters at an economic disadvantage with other employers of the same size.

o The Commission's own data indicates that the vast majority of licensees are in compliance with EEO rules. The NOI stated at para. 14 that approximately 80 percent of broadcast renewals are granted after only routine EEO review. Of the remaining 20 percent, only one-fifth receive any EEO sanctions. Thus, only four percent of the licensed broadcast stations are found deficient of even paperwork infractions. Rarely does the Commission find evidence of outright discrimination.

Since May 31, 1996, the Commission has released Notices of Apparent Liability for eight Texas stations involving allegations of violations of its EEO rules and policies.[4/] In each of these cases, the Commission found no reason not to renew the stations' licenses and no evidence of overt discrimination in hiring. What it did allege was that these stations were deficient in record-keeping and imposed forfeitures ranging from $6,000 to $15,000. TAB finds no evidence in the Commission's own statements to show any correlation between record-keeping and advancing the goal of increasing employment opportunities for minorities and females in broadcasting. The fact that only a tiny fraction of licensees are found to be

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[4/] KSAM(AM)/-FM, Huntsville, Texas, FCC 96-226, released May 31, 1996; KTEM(AM)/KPLE(FM), Temple, Texas, FCC 96-237, released June 4, 1996; KEBE(AM)/KOOI(FM), Jacksonville, Texas, FCC 96-243, released June 12, 1996; and KGVL(AM)/KIKT(FM), Greenville, Texas, FCC 96-247, released June 12, 1996.

in violation of the record-keeping requirements should be justification enough for relaxation, if not elimination, of this burdensome and costly regulation.

TAB asks the Commission to bear these factors in mind when determining a threshold for exempting stations from record-keeping requirements. These issues make irrelevant the question of how many stations will be exempted by increasing the threshold.

Again, the Commission asks how stations that are exempt from record-keeping on recruitment could demonstrate compliance. TAB feels strongly that in the event of a challenge the petitioner seeking to deny renewal of the license of a station that is exempt from the record-keeping requirements should bear the burden of proving the licensee's employment of minorities and females had deteriorated significantly over the license term or that there had been a fully-adjudicated finding of violation of state or federal anti-discrimination statutes. (See Section II.A supra) A station's employment records still would be available for review.

E. Market Size Should Not be a Qualifying Factor

The NPRM asks at para. 21 (b) whether market size should be a qualifying factor. While the NPRM correctly notes that stations located in smaller markets have difficulty in competing with stations in larger markets, relaxing requirements for stations in smaller markets does not solve the problem for stations nominally located in large markets, but physically located at a great distance from population centers. This is especially true in large states such as Texas. For example, the Houston ADI includes stations located more than 40 miles from downtown Houston. KSHN, Liberty, Texas is located 45-minutes from Houston. It has eight full-time and two part-time employees and is included in the Houston

ADI for purposes of the Commission's EEO rules. Similarly, there may be very large stations nominally located in smaller markets. The Commission should make its EEO requirements more equitable for all market sizes.

F. Alternative Labor Force Statistics

In general, the size of the local minority labor force is, by itself, not always a true measure of availability of minority applicants in otherwise legally permissible affirmative action programs. Consider the predicament of the stations located in Walker County, Texas, with a total population of approximately 51,000 persons. The population is 60% minority. But, of that number, more than 11,000 are inmates at the Texas Department of Corrections' main prison facility! It is patently absurd to count these inmates as part of the available workforce.

A similar situation occurs in those areas with large numbers of migrant workers: "It seems unreasonable to suggest that migrant agricultural workers—again minority or white—will normally be suitable for white collar or technical jobs in a radio station." Florida State Conference of Branches of the NAACP v. FCC, 24 F.3d 271, 274 (D.C. Cir. 1994)

In instances in which the labor force is skewed, the Commission should give broadcasters the option to use as a measure of availability the percentage of minorities and women in the relevant labor force with the required and necessary skills for the job(s) in question. For example, if a station needed an English-speaking disc jockey or anchor, minorities who do not speak English should not be included in the pool of applicants from which stations are expected to recruit.

III. SUGGESTIONS FOR FORFEITURE GUIDELINES

Excessive fines for first offenses make corrective measures too expensive and almost impossible to undertake. In assessing forfeitures, TAB suggests the Commission give stations a warning for the first offense, which probably would be enough to bring most stations in line—considering most stations are cited for lack of record keeping—before a second measure is necessary. TAB recommends the schedule of fines be reduced and applied only for the second offense. A harsher penalty might be warranted for the third offense.

IV. FCC'S ROLE IN EEO COMPLIANCE

While the TAB submits comments suggesting substantive changes to the FCC's EEO rules, it is obligated to ask the Commission to reconsider its role as an EEO enforcement agency. Broadcasters are among this country's strongest advocates for equal employment opportunities for minorities and oppose discrimination in all of its disguises. Remedies meant to cure past wrongs, however, oftentimes create new and greater problems. TAB respectfully suggests that the Commission's efforts actually hinder broadcasters' attempts to uphold the spirit of EEO. Broadcasters are in no danger of going unregulated and the Commission is grossly overloaded with urgent matters only the FCC is capable of handling. But, there are other agencies tasked with preventing discrimination in employment.

At present, broadcasters are subject to no fewer than four separate enforcement mechanisms: the federal EEOC, state employment or human relations agencies, the civil courts and the FCC. Congress explicitly assigned the role of enforcing laws against employment discrimination to the U.S. Equal Employment Opportunity Commission.

Should the Commission eliminate or reduce its role in EEO enforcement, broadcasters will continue to be subject to at least three other enforcement mechanisms. Any individual who believes that he or she has been the victim of discrimination by a broadcaster has multiple forums, state and federal, in which to seek redress in a more timely fashion than the FCC can provide. Indeed, the Commission is neither the first nor the best place to advance such a claim, since the Commission is powerless to award an individual any direct damages or other relief. The Commission is limited to sanctioning the broadcaster for violation of its rules and then, in a far less timely manner—only at license renewal time—thereby diminishing any effective corrective action.

The Commission's efforts are made difficult by conflicting state law and court cases. In fact, the Commission's current rules conflict with and ultimately hamper other entities' efforts to advance equal employment opportunities. Texas statutes and federal laws against discrimination put the TAB and individual broadcasters in a complex if not impossible situation in trying to identify minorities. The Texas Human Rights Commission advised TAB that it cannot permit job seekers to include information about their ethnicity when they place ads seeking employment in TAB's Job Announcements publication distributed to broadcasters. Even if the job seekers voluntarily provide information about their race, TAB would be subject to potential charges of discrimination and could face lawsuits for reverse discrimination if lists that included only minorities were supplied to broadcasters. The situation is similar to the plight of a broadcaster who asks: "Why are we forbidden by one federal law from asking someone what their race is, but we are required by another federal law to report the race and sex of everyone who applies?"

V. THE CONSTITUTIONALITY OF GOVERNMENT-MANDATED AFFIRMATIVE ACTION PRACTICES

The fine line between affirmative action policy and reverse discrimination has been pulled tighter in Texas with the U.S. Supreme Court's refusal, July 1, 1996, to hear an appeal by the State of Texas in the reverse discrimination case against the University of Texas. Texas v. Hopwood, No. 95-1773, 1996 U.S. Lexis 4267, decided July 1, 1996. The Court's decision left standing the decision that invalidated the University of Texas Law School's admission program aimed at increasing minority enrollment. Hopwood v. Texas, 78 F.3d 932 (5th Cir. 1996).

In three states—Texas, Mississippi and Louisiana—the Fifth Circuit's ruling prohibits a governmental body's policy that imposes reverse discrimination. The Commission's EEO rules—with a policy aimed at increasing statistical minority recruitment—are strikingly similar to the criteria outlawed by the Fifth Circuit. For as long as broadcasters are required or even encouraged to achieve race and gender-based quotas or meet a safe-harbor number, those in the unprotected class (white males) are the victims of discrimination, *per se*. The evident question is if the Commission continues its role in EEO enforcement, would its policy stand up to a federal court test in one of these states, or would the station involved find itself in an indefensible position against a charge of reverse discrimination brought by a plaintiff acquainted with the discriminatory practices fostered, encouraged and even mandated by the current FCC EEO regulations?

The Fifth Circuit Court in the Hopwood case denied the University of Texas' attempted justification for its discriminatory action as the means necessary to achieve diversity in its student body. Meanwhile, the Commission still seeks to justify its EEO

requirements in the interest of diversity in programming. The Fifth Circuit Court suggests that a "diversity" justification is insufficient: "[T]he use of race to achieve diversity undercuts the ultimate goal of the Fourteenth Amendment: the end of racially motivated state action." (Hopwood at 947-48) Aside from being arguably unconstitutional, the Commission's approach is far less practical than allowing market supply and demand to work.

Market demands are truly the underlying driving force in whether any particular program or, in the case of radio, an entire station succeeds. Employment diversification has very little, if anything, to do with programming decisions. No one disputes the fact that a radio station looks for an underserved audience and then provides that particular underserved group the music, entertainment and information it wants, including the on-air personnel who have the strongest appeal or affinity to the target audience. The same is true in program development for television, locally and nationally.

Broadcasters are keenly aware that racism has long been, and in many respects continues to be, a problem throughout our society. Whatever racist practices occurred 30 and 40 years ago in the broadcasting industry are a matter of history in today's ultra-competitive business environment. Broadcasters have learned that it is simply good business to hire diverse talent, both on the air and on the street. The Commission's own statistics reveal only a minuscule number of broadcasters are ever adjudged guilty of any actual discrimination.

The Commission itself has now recognized that its "EEO requirements may unnecessarily burden broadcasters." NPRM at para. 1. Even though broadcasters are hiring minorities and rarely found guilty of discriminatory practices, they must maintain voluminous

files on recruitment efforts and record and retain detailed information about every applicant for every job opening. In 1994, TAB estimated the cost of EEO compliance for Texas stations at $12.3 million per year, based on a survey of its members. See Attachment A at p. 8.

The Court confirmed in Hopwood that an EEO policy attempting to mandate diversity is counterproductive: "Finally, the classification of persons on the basis of race for the purpose of diversity frustrates, rather than facilitates, the goals of equal protection." Hopwood at 944.

The enormous amount of time required for stations to complete paperwork and other record-keeping obligations under the Commission's EEO rules is costly. The bulk of FCC forfeitures are based on a station's administrative skills more than its commitment or lack thereof to EEO. The irony: the Commission has penalized licensees for failure to maintain all necessary paperwork even when the employment profiles of those licensees included reasonable numbers of minorities and women and even where there had been no substantial allegation of any actual discrimination. TAB believes the Commission could accomplish more in promoting diversity by eliminating the burdensome administrative requirements and excessive forfeitures for insufficient record keeping, thereby giving stations more resources to recruit qualified minorities.

The focus on record-keeping fosters a "guilty until proven innocent" perception about broadcasters. This situation actually gives licensees incentives to settle any complaints of alleged employment discrimination quickly, regardless of the merits of the allegations in order to avoid the particularly harsh FCC forfeitures and the possible loss of the license

itself. The Commission's EEO policy removes an important element of impartiality in investigating complaints of discrimination.

In effect, the EEO policy denies broadcasters their constitutional right of due process. In most instances, there is no evidentiary hearing before a determination is made on whether to assess a forfeiture. The Commission simply assesses a forfeiture in instances in which it determines that a licensee is not in compliance with its complicated EEO record-keeping and recruitment requirements. Broadcasters may settle, by paying the fine or the petitioner or both, because they can't afford a court challenge. This economic disadvantage and the fear of putting their licenses in jeopardy again denies these broadcasters their constitutional right to due process.

VI. THE PROCESS IS FLAWED

Many people alleging discrimination rarely, if ever, file petitions to deny license renewals. Rather, the Commission hears from the same law firms and special interest groups that have taken on the self-appointed role of private attorneys-general in filing a blizzard of petitions to deny at renewal time. The process is rife with abuse as detailed in the attached declaration of Ann Arnold, TAB's Executive Director. See Attachment C.

If the Commission determines to remain active in the arena of equal employment opportunity, it should focus exclusively on substantive matters rather than issues of form and quantity which when coupled with power to deny a license can and does invite reverse discrimination of the most calculated and blatant type. By the Commission's own statements and the evidence submitted in these comments, the Commission's EEO policies are badly

flawed and in need of reform, if not complete elimination. They impose enormous paperwork burdens on licensees with little or no demonstrable result.

Broadcasters spend millions of dollars annually researching how to increase audiences and making their products more appealing to listeners and viewers. It is naive for the FCC to assume that questions about visible staffing and casting are not asked and answered daily in focus groups and telephone coincidental surveys. Broadcasting is one of the most competitive businesses in America today. Owners, licensees and operators know well that diversity in faces, voices and background all build bigger audiences and stronger appeal. So why not let the unfettered marketplace perform its role perfectly well ?

The comments in this proceeding from TAB and other broadcasters demonstrate that the present system is, at best, a well-intended objective lacking statutory authority for punitive sanctions and, at worst, an unconstitutional policy denying due process and instigating reverse discrimination.

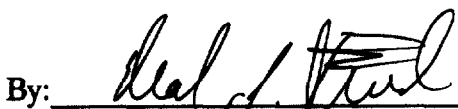
The experience of TAB and the Commission over the years has been that the vast majority of broadcasters are motivated by one factor in recruiting personnel—finding the best person for the job, regardless of ethnicity or gender. The Commission's paperwork requirements only serve to put roadblocks in that path, diverting stations' resources away from finding and attracting good people by forcing broadcasters in the license renewal process to meet meaningless and costly record-keeping regulations which are nonexistent in nearly every other American industry.

VII. CONCLUSION

TAB appreciates this opportunity to participate in the Notice of Proposed Rule Making and to assist the Commission in formulating an EEO policy that will advance the goal of equal employment opportunity while eliminating unnecessary paperwork burdens on licensees and abuse of the Commission's processes.

Respectfully Submitted,

TEXAS ASSOCIATION OF BROADCASTERS

By: 
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July 11, 1996

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